

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* GAUTREAUX, Minors.

UNPUBLISHED  
February 12, 2015

Nos. 322483; 323495  
Allegan Circuit Court  
Family Division  
LC No. 13-051717-NA

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Before: O'CONNELL, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother S. Gautreaux and respondent-father M. Gautreaux each appeal as of right the trial court's terminating their parental rights to their three children. In Docket No. 322483, the trial court terminated respondent-mother's parental rights under MCL 712A.19b(3)(b)(i) (reasonably likely parent will cause future physical abuse), (c)(i) (failure to rectify conditions lead to adjudication), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that children will be harmed if returned to the parent). In Docket No. 323495, the trial court terminated respondent-father's parental rights under MCL 712A.19b(3)(a)(ii) (desertion for 91 or more days), (g), and (j). We affirm in both appeals.

I. FACTS

A. BACKGROUND FACTS

Children's Protective Services investigator Robert Boersen testified that in April 2013, the Allegan County Sheriff's Department informed him that it had arrested respondent-mother for child abuse. Respondents' six-year-old son told Boersen that respondent-mother struck him with a metal salad-serving spoon ten to twelve times and bit him on the arm. Boersen found bruising and welts on the child's back and a bite-mark on the child's forearm. Boersen also found bruising on respondents' five-year-old son, and that child told Boersen that respondent-mother had struck him with the same spoon a week before to the point where he was "coughing up blood when he vomited." All three children described being struck by the spoon, shoes, belts, and other objects. According to Boersen, respondent-mother admitted that she struck the children with the spoon.

The Department of Human Services (the Department) petitioned to remove the children and asked the trial court to terminate respondent-mother's parental rights at the initial dispositional hearing. The trial court adjourned the initial preliminary hearing to secure counsel for respondent-father, who resided in Texas. At the May 15, 2013 preliminary hearing, the trial

court noted that the petition did not contain any allegations against respondent-father. At the hearing, respondent-father represented himself and asked that the trial court place the children with him. The trial court ordered the Department to conduct a home study of respondent-father's residence and placed the children with the Department in the interim.

The Department filed an amended petition on May 16, 2013, which alleged in pertinent part that respondent-father had a criminal history and had not contacted the children for approximately three years. In July 2013, respondent-mother admitted that she engaged in inappropriate discipline and required services. The trial court took jurisdiction over the children on the basis of respondent-mother's plea.

Respondent-mother subsequently participated in a psychological evaluation. Dr. William Brooks diagnosed respondent-mother with bipolar and adjustment disorders. Dr. Brooks recommended that respondent-mother participate in regular counseling, parenting classes, and therapeutic parenting time. However, Heather Miller-Edwardson, the children's counselor, reported that contact with respondent-mother would cause the children to exhibit anxiety, fear, post-traumatic stress symptoms, and negative behaviors. Miller-Edwardson opined that "having no contact with their biological mother is in the best interests of the children."

In August 2013, Susan Wonch, the children's foster care caseworker, reported that respondent-mother continued to be emotionally unstable. Wonch reported that respondent-mother sent numerous letters to the children that validated her abuse by quoting scripture. Wonch testified that she spoke with respondent-father over the phone and he indicated that he was willing to participate in services, but he then failed to contact the agency. Wonch testified that the children did not have contact with respondent-mother or respondent-father. Wonch recommended telephone visitation with respondent-father, but opined that it would be harmful for the children to have contact with respondent-mother.

Respondent-father was incarcerated in Texas from September 2013 to October 2013. At a dispositional review hearing in November 2013, the trial court noted that respondent-father had been served with notice but was not present. Wonch testified that respondent-mother had participated in services but made no progress. Wonch testified that she made multiple attempts to contact respondent-father before, during, and after respondent-father's release from jail, but respondent-father did not return her calls.

The children's foster mother testified that the children spoke frequently about their experiences in respondent-mother's care. According to the foster mother, all three children discussed physical abuse and emotional trauma. All three children expressed anxiety about returning to their mother's care. The oldest child specifically told her that he was concerned that respondent-mother would beat him so badly that he would die. The children also engaged in disturbing play, such as being tied up and crying for help. The trial court found that respondent-mother had not benefitted from services and ordered that she participate in individual counseling and anger management, among other services.

On December 16, 2013, the Department filed a supplemental petition to terminate respondents' parental rights. In February 2014, Wonch testified that respondent-father had "minimal" participation in the case. He had participated in two telephone visits in December

2013. According to Wonch, respondent-mother refused to take medication and insisted that she did not have a mental illness. Wonch reported that respondent-mother's counselor opined that she was not likely to make progress. Wonch testified that the children continued to express fear and anxiety about respondent-mother. Wonch had provided Miller-Edwardson with letters that respondent-mother wrote the children, but Miller-Davis did not give them to the children because they were inappropriate.

In April 2014, Wonch testified that she made numerous attempts to contact respondent-father, but his last contact with the Department was his second December 2013 telephone visitation with the children. According to Wonch, respondent-mother was "very resistant" and stated that she did not need services. Respondent-mother no longer wished to participate in counseling and refused to take medications. The children were doing well in their current placement, but their counselor reported that they still showed "extreme stress and trauma responses" when talking about respondent-mother.

Respondent-mother testified that "these papers that you guys give mean nothing" and that the children were lying about her. According to respondent-mother, she discontinued counseling because her counselor was immoral, and she did not intend to participate in services in the future. She did not take medications for her mental health and was not employed. Additionally, respondent-mother engaged in a disturbing rant about her "ex-mother." The trial court ordered the Department to initiate termination proceedings.

On June 10, 2014, respondent-father's attorney petitioned to withdraw from representing respondent-father because he had not responded to the attorney's attempts to contact him since October 2013. The trial court granted counsel's request to withdraw.

## B. RESPONDENT-MOTHER'S TERMINATION HEARING

The trial court held a termination hearing June 17, 2014. The trial court noted that the Michigan Supreme Court had recently decided that the one-parent doctrine under which it was proceeding against respondent-father was unconstitutional. Accordingly, the termination hearing concerned only respondent-mother's parental rights. At the termination hearing, Wonch and Miller-Edwardson testified consistently with their previous reports. Miller-Edwardson acknowledged that she had recommended terminating respondent-mother's parental rights in October 2013, but stated that she continued to monitor the children's progress in therapy to determine whether reunification was possible. Miller-Edwardson opined that reunification would harm the children.

Respondent-mother testified that she did not complete counseling because she did not need it, did not take medications because she did not need them, and tore up her service plan because it was not important. According to respondent-mother, she did not need assistance because she had God and she did not need other people to tell her what to do. Even if the trial court ordered her to engage in further treatment, she would refuse. She now knew the complete truth through scripture and would never hit her children again. However, respondent-mother testified that she had previously stopped spanking her children, but then "started doing it again, eventually."

Wonch opined that respondent-mother had not benefitted from services. Wonch testified that the children deserved permanency and that they had never stated that they loved or missed respondent-mother. To the contrary, the children did not want to have any contact with respondent-mother. Wonch did not seek family counseling or parenting time between respondent-mother and the children because the children's therapist recommended against it.

The trial court found that the Department proved MCL 712A.19b(3)(b)(i), (c)(i), (g), and (j) by clear and convincing evidence. It found that respondent-mother had engaged in inappropriate physical discipline and refused to participate in services to address her issues. It found that respondent-mother benefitted from parenting classes, but not counseling or mental health treatment because she refused to participate in those services. The trial court found that respondent-mother was sincere when she indicated that she had changed her beliefs regarding physical punishment. However, it also found that nothing prevented respondent-mother from reverting back to physical abuse. It found that respondent-mother had not benefitted from mental health services, which were designed to help respondent-mother address the issues underlying that abuse. Finally, it found that it was reasonably likely that returning the children to respondent-mother's care would subject them to a risk of harm.

Regarding the children's best interests, the trial court found that the children had been in foster care for 14 months and needed permanence and stability that respondent-mother could not provide. It found that the children were placed together, felt safe in foster care, and there was a potential for adoption by the foster family. It found that the children were not bonded with respondent-mother, but instead experienced fear and anxiety about having contact with her. The trial court ordered respondent-mother's parental rights terminated.

### C. RESPONDENT-FATHER'S TERMINATION HEARING

On June 18, 2014, the Department filed a supplemental petition regarding respondent-father. The Department alleged that respondent-father deserted the children. The Department also alleged that the children reported that respondent-father abused alcohol, sold drugs, and engaged in domestic violence. The supplemental petition sought termination of respondent-father's parental rights.

At a preliminary hearing on June 25, 2014, the trial court noted that respondent-father had participated in previous proceedings by phone but had stopped participating. The trial court noted that respondent-father had been notified of the proceedings at his current address, which was a jail in Angleton, Texas. It found that respondent-father had not called to appear at the proceedings. It proceeded in respondent-father's absence.

At a review hearing in July 2014, Wonch reported about her repeated attempts to contact respondent-father. According to Wonch, she sent respondent-father letters asking whether he was interested in participating in services, pamphlets, and worksheets, but did not receive a response. She referred respondent-father to numerous services, but he did not participate. Respondent-father had a lengthy criminal history, including convictions for controlled substance offenses and "causing bodily injury to family members." The children told her that respondent-father was drunk and attacked respondent-mother in their presence. Wonch testified that respondent-father had not contacted the children since December 2013.

The trial court held a combined adjudication and dispositional hearing in August 2014. At the outset of the hearing, the trial court found that respondent-father was incarcerated in a jail in Brazoria County, Texas, and it determined that MCR 2.004 did not apply. It found that respondent-father had been personally served and ordered to appear, but had not called to make arrangements to participate. It determined that respondent-father was aware of the proceedings but had chosen not to participate and proceeded in his absence.

At the hearing, Wonch reiterated her previous testimonies. Wonch opined that the children would be at a risk of harm if the trial court returned them to respondent-father's care. Wonch testified that respondent-mother had indicated that respondent-father had never financially supported the children. Wonch also testified that the children had only a minimal bond with respondent-father. Miller-Edwardson opined that it was in the children's best interest to remain in their current placement, where they had a "very high" likelihood of being adopted.

The trial court assumed jurisdiction over the children and terminated respondent-father's parental rights under MCL 712A.19b(3)(a)(ii), (g), and (j). It found that respondent-father had not participated in the proceedings in a meaningful way and had no contact with the children since December 2013. It also found that respondent-father's history of drunkenness, criminality, domestic violence and lack of stable housing or employment meant he was not in a position to provide the children with proper care and custody and would place the children at a risk of harm if it returned them to his care.

Regarding the children's best interests, the trial court found that respondent-father had not shown any desire to maintain a bond with the children. It found that respondent-father had not participated in the proceedings and was not reasonably likely to be able to take care of the children in the foreseeable future. It found that the children were doing well in their foster home, there was a high likelihood of adoption, and the children did not desire to live with or have contact with respondent-father. Accordingly, it found that termination was in the children's best interests and terminated respondent-father's parental rights.

## II. STANDARDS OF REVIEW

This Court reviews for clear error the trial court's factual findings, ultimate determinations on the statutory grounds for termination, and determination of the children's best interests. MCR 3.993(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We review for clear error whether a trial court engaged in reasonable efforts to reunify a child with his or her parent. *Id.* A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake. *Id.* We review de novo questions of constitutional law, including whether the trial court's proceedings protected the parent's rights to procedural due process. *In re Sanders*, 495 Mich 394, 403-404; 852 NW2d 524 (2013).

## III. RESPONDENT-MOTHER, DOCKET NO. 322483

### A. STATUTORY GROUNDS

Respondent-mother contends that the trial court erred when it found that multiple statutory grounds supported terminating her parental rights. We disagree.

MCL 712A.19b(3)(b)(i) provides that the trial court may terminate a parent's rights if the child has suffered a physical injury, the parent's act caused the injury, and it is reasonably likely that the child will suffer further injury in the foreseeable future. MCL 712A.19b(3)(c)(i) provides that the trial court may terminate a parent's rights if there is clear and convincing evidence that:

[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

And, MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

A parent's failure to benefit from a service plan is evidence that the parent will not be able to provide a child with proper care and custody and that the child may be harmed if returned to the parent's home. *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014). A parent's mental illness can affect that parent's ability to parent a child. See *In re Utrera*, 281 Mich App 1, 23, 25; 761 NW2d 253 (2008). The trial court may consider the parent's mental health conditions when determining whether it is reasonably likely the child will be harmed if returned to the parent's home. See *In re AH*, 245 Mich App 77, 87; 627 NW2d 33 (2001).

In this case, the trial court took jurisdiction over the children because respondent-mother had administered serious beatings to them. A psychological evaluation determined that respondent-mother suffered from a mental illness. Respondent-mother refused to engage in services to treat her mental illness. Further, while respondent-mother stated that she had learned that her attempts to impose discipline on the children constituted abuse, respondent-mother also testified that she had previously stopped striking the children but had "started doing it again, eventually."

Respondent-mother flat out refused to participate in services to address and remedy the mental health issues underlying the abuse she inflicted on the children. It is hard to imagine a more dangerous situation into which the trial court could place children than to return them to the home of their mentally ill parent who severely beat them but refuses to acknowledge that she has mental health issues. We are not definitely and firmly convinced that the trial court made a mistake when it found that respondent-mother had not benefitted from services and that it was reasonably likely that she would harm the children in the future.

## B. BEST INTERESTS

Respondent-mother contends that the trial court clearly erred when it found that termination was in the children's best interests. Respondent-mother contends that the children's therapist and caseworker were opposed to reunification and did not provide sufficient evidence of the children's interests. We disagree.

To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The trial court may also consider "a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption." *White*, 303 Mich App at 714.

In this case, the trial court considered testimony regarding a variety of factors. Respondent-mother had a history of committing violence against the children and did not comply with her service plan. Despite the Department's provision of mental health services, respondent-mother entirely refused to participate in them. The children and respondent-mother had no bond and the children did not desire to see her. The children were together, doing well in foster care, and it was likely that their foster family would adopt them. We are not definitely and firmly convinced that the trial court made a mistake when it found that terminating respondent-mother's parental rights was in the children's best interests.

#### IV. RESPONDENT-FATHER, DOCKET NO. 323495

##### A. DUE PROCESS

Respondent-father contends that the trial court denied him procedural due process when it did not facilitate his appearance at the combined adjudication and dispositional hearing at which it terminated his parental rights. We disagree.

"Due process applies to any adjudication of important rights." *In re Brock*, 442 Mich 101, 110; 499 NW2d 752 (1993), quoting *In re LaFlure*, 48 Mich App 377, 385; 210 NW2d 482 (1973). A parent's interest in the companionship, care, custody, and management of his or her children is protected by due process. *Stanley v Illinois*, 405 US 645, 651; 92 S Ct 1208; 31 L Ed 2d 551 (1972); *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). "Due process requires fundamental fairness, which is determined in a particular situation by considering any relevant precedents and then by assessing the several interests that are at stake." *Brock*, 442 Mich at 111 (quotation marks and citation omitted).

The Department must attempt to engage even absent parents in termination proceedings. *In re Rood*, 483 Mich 73, 96-98; 763 NW2d 587 (2009) (opinion by CORRIGAN, J.). Therefore, it must notify or attempt to notify a parent of termination of parental rights proceedings. *Id.* at 107-108. MCR 3.972(B) generally requires that parents be present at an adjudication, but it provides that the trial court "may proceed in the absence of the respondent provided notice has been served on the respondent."

First, respondent-father contends that the trial court violated his right to due process by failing to facilitate his appearance at the hearing under MCR 2.004. MCR 2.004 applies in actions involving termination of parental rights “in which a party is incarcerated under the jurisdiction of the Department of Corrections.” MCR 2.004(A)(2). MCR 2.004(C) provides that the trial court shall order the facility at which a prisoner is housed “to allow the party to participate with the court or its designee by way of a noncollect and unmonitored telephone call in a hearing or conference[.]” However, not every violation of a law or court rule constitutes a violation of due process. See *Gillie v Genesee Co Treas*, 277 Mich App 333, 356 n 12; 745 NW2d 137 (2007) (the question is whether the party had actual notice of the proceedings, not whether a particular procedure was followed).

Respondent-father does not address how MCR 2.004 applies to him, since he was not incarcerated under the jurisdiction of the Department of Corrections but rather was incarcerated under the jurisdiction of another state. Further, respondent-father does not address whether a violation of MCR 2.004 would deny respondent-father his right to procedural due process when he was provided with notice of the hearing, as he was in this case. Parties abandon issues on appeal if they “merely announce their position and leave it to this Court to discover and rationalize a basis for their claims.” *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008). Respondent-father simply states that the trial court’s failure to apply MCR 2.004 denied him due process without explanation or support. He does not address the basis of the trial court’s decision. We conclude that respondent-father has abandoned this issue by failing to sufficiently address it.

Respondent-father also contends that the trial court’s decision to proceed in his absence denied him the opportunity to present a defense and was “termination by default.” We disagree.

Proofs of service on respondent-father are available for each of the hearings, including the adjudication trial and dispositional hearing. Witnesses provided legally admissible evidence of respondent-father’s failure to consistently contact the Department and participate in hearings since November 2013 and his complete lack of contact after December 2013. Accordingly, there was evidence that respondent-father had actual notice of the proceedings and that the Department attempted to engage with him to participate. We conclude that the trial court’s decision to proceed with the adjudication and disposition in respondent-father’s absence did not deny respondent-father procedural due process.

## B. REASONABLE EFFORTS

Respondent-father contends that the trial court and Department did not engage in reasonable efforts to reunify the children with him. We disagree.

The trial court must make reasonable efforts to reunify a child with his or her family unless aggravating circumstances are present. MCL 712A.19a(2). The Department must make reasonable efforts to reunite even an incarcerated parent with his or her child. *Mason*, 486 Mich at 152. However, “there exists a commensurate responsibility on the part of [the parent] to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012).



In this case, the Department attempted to engage with respondent-father, but he refused or neglected to engage with the Department. He did not return phone calls or paperwork, barely engaged in phone visitations with the children, and did not consistently contact the Department. In sum, respondent-father did not sustain his commensurate responsibility to participate in the proceedings. We conclude that the trial court's finding that the Department made reasonable efforts to engage respondent-father in the proceedings was not clearly erroneous.

### C. STATUTORY GROUNDS

Respondent-father contends that there was insufficient evidence to support terminating his parental rights under MCL 712A.19b(3)(a)(ii), (g), and (j). We disagree.

The trial court may terminate the parents' parental rights at the initial dispositional hearing if it finds on the basis of "clear and convincing legally admissible evidence" that the facts in the petition are true and establish a statutory basis for terminating the parent's parental rights under MCL 712A.19b(3)(a), among other statutory grounds. MCR 3.977(E); *Utrera*, 281 Mich App at 15-16. The trial court may terminate a parent's parental rights under MCL 712A.19b(3)(a)(ii) if "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period."

First, respondent-father contends that the trial court could not consider his failure to seek custody of the children prior to his adjudication. Respondent-father provides no authority for this assertion. There is no logical reason why the trial court must ignore a parent's abandonment of a child before his or her adjudication any more than it must ignore a parent's physical abuse or neglect of a child before adjudication. Witness testimony provided legally admissible evidence of respondent-father's failure to contact the children. We conclude that the trial court was entitled to consider that evidence.

In this case, Wonch testified at respondent-father's adjudication and dispositional hearing that respondent-father had not contacted or supported the children since December 2013, the children were in the Department's custody, and respondent-father had not contacted the Department to attempt to regain their custody. The hearing took place in June 2014. Accordingly, more than 91 days had elapsed without respondent-father seeking custody of the children. We are not definitely and firmly convinced that the trial court made a mistake when it found that MCL 712A.19b(3)(a)(ii) supported terminating respondent-father's parental rights.

We do not address respondent-father's arguments under MCL 712A.19b(3)(g) and (j). The trial court need only find a single statutory ground to terminate a parent's parental rights. *Olive/Metts*, 297 Mich App at 41. Given that the trial court properly terminated under MCL 712A.19b(3)(a)(ii), it had sufficient grounds to terminate respondent-father's parental rights.

### D. BEST INTERESTS

Respondent-father contends that termination was not in the children's best interests because the trial court denied him the opportunity to present evidence regarding the children's best interests. The trial court determined the children's best interests from the evidence available in the record, and we have already determined that the trial court did not deny respondent-father the opportunity to appear at the hearing. We decline to reverse on this basis.

## V. CONCLUSION

In Docket No. 322483, we affirm the trial court's termination of respondent-mother's parental rights. Respondent-mother refused to engage in services to address her mental health issues. We conclude that the trial court did not clearly err when it found that statutory grounds supported terminating respondent-mother's parental rights and that reunification was not in the children's best interests.

In Docket No. 323495, we affirm the trial court's termination of respondent-father's parental rights. The trial court did not deny respondent-father due process when it determined that he had received notice of the adjudication and disposition and proceeded in his absence. We conclude that the trial court properly terminated respondent-father's parental rights on the basis of clear and convincing, legally admissible evidence.

We affirm in both dockets.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ Jane E. Markey